

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

U.S. DISTRICT COURT
FILED AT WHEELING, WV

JUL - 3 2007

NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

MICHAEL ERIC HORNES,

Petitioner,

v.

CIVIL ACTION NO. 3:06-CV-57
(BAILEY)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of proposed report and a recommendation ["R & R"]. Magistrate Judge Seibert filed his R & R on June 11, 2007 [Doc. 30]. In that filing, the magistrate judge recommended that this Court grant the defendant's Motion to Dismiss or in the Alternative, Motion for Summary Judgment [Doc. 21]. Additionally, the magistrate judge recommended that the plaintiff's Motion for Leave to File [Doc. 27] be granted, and the Amended Complaint attached thereto be dismissed with prejudice.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due by June 25, 2007, within ten (10) days after being served with a copy of the R & R pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). No objections have been filed.

Therefore, it is the opinion of the Court that the **Magistrate Judge's Report and Recommendation** [Doc. 30] should be, and is, hereby **ORDERED ADOPTED**. Accordingly, the Court hereby **GRANTS** the defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment [Doc. 21] and **DISMISSES** the Complaint [Doc. 1] **with prejudice**. The Court further **GRANTS** the plaintiff's Motion for Leave to File [Doc. 27] and **DISMISSES** the Amended Complaint **with prejudice**.

The Clerk is directed to mail a true copy of this Order to all counsel of record and the *pro se* petitioner.

DATED: July 2, 2007.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE